

**SUPREME COURT CALENDAR  
SAN FRANCISCO SESSION  
MARCH 9, 10, and 11, 2004  
(FIRST AMENDED)**

The following cases are placed upon the calendar of the Supreme Court for hearing at its courtroom at 350 McAllister Street, Fourth Floor, San Francisco, California, on March 9, 10, and 11, 2004.

**TUESDAY, MARCH 9, 2004—9:00 A.M.**

- |     |         |   |
|-----|---------|---|
| (1) | S099667 | In re Allen J. Kent and Raul V. Aguilar, etc.; Aguilar v. Lerner<br>(Order to show cause re contempt)                             |
| (2) | S104019 | Gerawan Farming v. Lyons, as Secretary, etc.<br><i>(Baxter, J., not participating; Ruvolo, J., assigned Justice Pro Tempore.)</i> |
| (3) | S109537 | People v. Canty   |
| (4) | S118032 | Zamos v. Stroud   |

**1:30 P.M.**

- |     |         |  |
|-----|---------|--|
| (5) | S040471 | People v. Milton Ray Pollock <i>[Automatic Appeal]</i> |
| (6) | S114285 | People v. Casper                                       |

**WEDNESDAY, MARCH 10, 2004—9:00 A.M.**

- |     |         |  |
|-----|---------|--|
| (7) | S116358 | Wiener v. Southcoast Childcare           |
| (8) | S111494 | People v. Konow                          |
| (9) | S104477 | Gavaldon v. Daimler-Chrysler Corporation |

**1:30 P.M.**

- |      |         |                           |
|------|---------|---------------------------|
| (10) | S107154 | In re Marriage of Goddard |
| (11) | S112260 | In re S.B.                |

**THURSDAY, MARCH 11, 2004—9:00 A.M.**

- |      |         |  |
|------|---------|--|
| (12) | S104851 | Haynes v. Farmers Insurance Exchange   |
| (13) | S115377 | People v. Britt  |
| (14) | S114171 | State of California v. Superior Court, County of Kings; Bodde<br><i>(Baxter, J., not participating; Simons, J., assigned Justice Pro Tempore.)</i> |

\_\_\_\_\_  
GEORGE  
Chief Justice

If exhibits are to be transmitted to this court, counsel must comply with Rule 18(c), California Rules of Court.

**SUPREME COURT CALENDAR  
SAN FRANCISCO SESSION  
MARCH 9, 10, and 11, 2004  
(FIRST AMENDED)**

The following case summaries are issued to inform the public and the press of cases that the Supreme Court has scheduled for oral argument and of their general subject matter. Generally, the descriptions set out below are reproduced from the original news release issued when review in each of these matters was granted and are provided for the convenience of the public and the press. The descriptions do not necessarily reflect the view of the court or define the specific issues that will be addressed by the court.

**TUESDAY, MARCH 9, 2004—9:00 A.M.**

***(1) In re Allen J. Kent and Raul V. Aguilar, etc.: Aguilar v. Lerner, S099667 (Order to show cause re contempt)***

The court ordered the two named attorneys to show cause why each should not be held in contempt of court for the willful neglect of the duty to appear for oral argument on February 10, 2004.

***(2) Gerawan Farming v. Lyons, as Secretary, etc., S104019 (Baxter, J., not participating; Ruvolo, J., assigned Justice Pro Tempore.)***

#02-52 Gerawan Farming, Inc. v. Lyons, S104019. (F031142; 94 Cal.App.4th 665.) Petition for review after the Court of Appeal reversed the judgment in a civil action. This case includes the following issues: (1) What is the appropriate test under article I, section 2 of the state Constitution for determining when the government may compel the funding of collective commercial speech? (2) Is the government interest in an agricultural-product marketing order illusory if it allows the majority of those affected by the order, rather than the government, to decide how the program should operate?

***(3) People v. Canty, S109537***

#02-167 People v. Canty, S109537. (C039187; 100 Cal.App.4th 903. Petition for review after the Court of Appeal affirmed a judgment of conviction of criminal offenses. This case presents the following issue: Was defendant entitled to have the disposition of her conviction for transportation of a controlled substance set in accordance with the provisions of the Substance Abuse and Crime Prevention Act of 2000 (Prop. 36, General Elec. (Nov. 7, 2000)), or was that enactment inapplicable because defendant was also convicted of misdemeanor driving under the influence of a controlled substance? (See Pen. Code, § 1210.1(b)(2).)

***(4) Zamos v. Stroud, S118032***

#03-118 Zamos v. Stroud, S118032. (B160484; 110 Cal.App.4th 60; Los Angeles County Superior Court; LC060622.) Petition for review after the Court of Appeal reversed an order granting a special motion to strike. This case presents the following issue: When there was probable cause to initiate a prior lawsuit, can an attorney be held liable for malicious prosecution for continuing to prosecute the lawsuit after discovering facts showing that the lawsuit has no merit?

**1:30 P.M.**

***(5) People v. Milton Ray Pollock, S040471 [Automatic Appeal]***

This matter is an automatic appeal from a judgment of death.

***(6) People v. Casper, S114285***

#03-54 People v. Casper, S114285. (D038550; 105 Cal.App.4th 1373; San Diego County Superior Court; SCD151173.) Petition for review after the Court of Appeal remanded for resentencing and otherwise affirmed a judgment of conviction of criminal offenses. This case presents the following issue: If the trial court dismisses prior conviction allegations under the three-strikes law with

respect to the computation of the term to be imposed on some but not all counts, is the defendant nonetheless subject to mandatory consecutive sentences under the three-strikes law on *all* of the counts involving crimes that were not committed on the same occasion and not arising out of the same set of operative facts, including those counts for which the prior convictions were dismissed?

**WEDNESDAY, MARCH 10, 2004—9:00 A.M.**

***(7) Wiener v. Southcoast Childcare, S116358***

#03-100 Wiener v. Southcoast Childcare, S116358. (G028814; 107 Cal.App.4th 1429; San Diego County Superior Court; 00CC01386, 00CC02595, 00CC03365.) Petition for review after the Court of Appeal reversed the summary judgment in a civil action. This case includes the following issue: Under what circumstances may the operators of a preschool be held liable for injuries incurred by the preschool's students when a third-party assailant intentionally drove his car through a four-foot- high chain link fence and onto the preschool's playground?

***(8) People v. Konow, S111494***

#03-04 People v. Konow, S111494. (D037680; 102 Cal.App.4th 1020; San Diego County Superior Court; SCD152825.) Petition for review after the Court of Appeal reversed an order dismissing a criminal proceeding. This case presents the following issues: (1) Is the power of the magistrate to dismiss a case in the interests of justice at the preliminary hearing (Pen. Code, § 1385) a "substantial right" of the defendants that renders their commitment unlawful under Penal Code section 995 if the magistrate erred in determining that he lacked authority to dismiss under section 1385? (2) Can a superior court judge, acting on a Penal Code section 995 motion, review any aspect of the ruling of another superior court judge granting a motion to reinstate criminal charges under Penal Code section 871.5?

***(9) Gavaldon v. Daimler-Chrysler Corporation, S104777***

#02-84 Gavaldon v. Daimler-Chrysler Corporation, S104777. (G026626, G027036; 95 Cal.App.4th 544.) Petition for review after the Court of Appeal reversed the judgment in a civil action. This case includes the following issue: Is a service contract, purchased to supplement the factory warranty accompanying the purchase of a new automobile, an express warranty within the meaning of the Song-Beverly Consumer Warranty Act (Civ. Code, § 1790 et seq.), entitling the purchaser to the replacement or restitution remedy of Civil Code section 1793.2(d) if satisfactory repairs cannot be made after a reasonable number of attempts?

**1:30 P.M.**

***(10) In re Marriage of Goddard, S107154***

#02-113 In re Marriage of Goddard, S107154. (B147332; 97 Cal.App.4th 1059.) Petition for review after the Court of Appeal affirmed in part and reversed in part the judgment in a marital dissolution action. This case presents the following issue: In a dissolution proceeding in which the husband did not appear for trial, is the wife's failure formally to introduce into evidence the service on the husband of notice of trial a jurisdictional defect that renders the ensuing judgment void, or are the jurisdictional requirements of Code of Civil Procedure section 594 satisfied so long as the record contains proof of service of the notice of trial?

***(11) In re S.B., S112260***

#03-14 In re S.B., S112260. (B154825; 103 Cal.App.4th 739; Los Angeles County Superior Court; CK39821.) Petition for review after the Court of Appeal reversed an order in a dependency proceeding. This case presents the following issues: (1) Must the juvenile court make a specific order regarding parental visitation after a legal guardian is appointed for a child under Welfare and Institutions Code section 366.26(c)(4), or may the court delegate visitation decisions to the guardian? (2) May the validity of the trial court's visitation order

be challenged on appeal in the absence of an objection to that order in the trial court?

**THURSDAY, MARCH 11, 2004—9:00 A.M.**

***(12) Haynes v. Farmers Insurance Exchange, S104851***

#02-71 Haynes v. Farmers Insurance Exchange, S104851. (G028171; 95 Cal.App.4th 588.) Petition for review after the Court of Appeal reversed a summary judgment in a civil action. This case presents the following issue: Was the provision in an automobile insurance policy limiting the coverage for permissive users to the minimum required by statute sufficiently clear and conspicuous to be enforceable?

***(13) People v. Britt, S115377***

#03-78 People v. Britt, S115377. (C033771; 107 Cal.App.4th 8; El Dorado County Superior Court; WS98F205.) Petition for review after the Court of Appeal affirmed a judgment of conviction of a criminal offense. This case presents the following issue: Can a registered sex offender be prosecuted in one county for failing to notify law enforcement agencies of his change of address when he moves from that county and also be prosecuted separately in the county of his new residence for failing to register there, or are two separate prosecutions barred under these circumstances by Penal Code section 654?

***(14) State of California v. Superior Court, County of Kings; Bodde, S114171 (Baxter, J., not participating; Simons, J., assigned Justice Pro Tempore.)***

#03-68 State of California v. Superior Court, County of Kings; Bodde, S114171. (F040111; 105 Cal.App.4th 1008; Kings County Superior Court; 00C2342.) Petition for review after the Court of Appeal denied a petition for writ of peremptory mandate. The court limited review to the following issue: Can a

plaintiff's failure to comply with the claim-filing requirements of the Tort Claims Act (Gov. Code, § 900 et seq.) or to plead facts excusing compliance be raised on demurrer to the complaint?